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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,736	12/20/2001	David D. Szarka	2000-IP-000120U1	1946

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EXAMINER

STEPHENSON, DANIEL P

ART UNIT

PAPER NUMBER

3672

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/026,736

Applicant(s)

SZARKA ET AL.

Examiner

Daniel P Stephenson

Art Unit

3672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 6,13,15,17 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-11 and 25-35 is/are rejected.
- 7) ☒ Claim(s) 3-5,12,14,16,18-23 and 36-39 is/are objected to.
- 8) ☒ Claim(s) 3-6,12-24 and 36-39 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Election/Restrictions*

The inventions are distinct, each from the other because of the following reasons:

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I - one-way valving comprises a flapper element as shown in Figures 1-3, Species II - one way valving is an annular seal as shown in Figure 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1, 2, 7-11, and 25-35 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with John Wustenberg on 4/2/03 a provisional election was made without traverse to prosecute the invention of Species I, claims 3-5, 12, 14, 16, 18-23, and 36-39. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6, 13, 15, 17 and 24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### *Specification*

4. The disclosure is objected to because of the following informalities: on page 8 line 14, the reference numeral 30a should be changed to 31a.

Appropriate correction is required.

#### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1, 2, 7-11 and 25-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray et al. in view of Maly et al. Murray (Figures 1-6, col. 2 line 55- col. 4 line 38) discloses a collar for use with a wellbore for cementing it into place. At the base of the collar is a spring loaded check valve that biases the valve member such that it resists fluid flow out of the exit flow passage. Spaced radially around the tubular are holes which allow the influx of fluid until such time as the influx is undesired. Then an annular closure sleeve, which is retained through the use of a frangible element, is lowered using a cementing plug. This closes the radial holes on the tubular, and allows the pumping of cement through the check valve at the base. The closure sleeve contains o-rings that seal against the influx of fluid after closure. A second cementing plug is then lowered through the casing string to displace the remaining cement located therein. Murray et al. does not disclose that there is a first set of check valves which are located on the sleeve used for closure that act upon the radial holes in the tubular. Nor does it disclose that these valves react to a difference in pressure within the collar and the outside of the wellbore. Nor does it disclose that there are holes within the closure sleeve that allow fluid passage in the sleeves first position but do not allow it in the sleeves second position. Maly et al. (Figures 2-4, col. 2 lines 20- col. 4 line 36) discloses a well casing fill up device that is to be used when lowering a tubular into the wellbore. It has a closure sleeve that is movable axially within the tubular and a set of check valves that act on the closure sleeve. The check valves allow the outside fluid to enter when there is a pressure differential between the inside of the tubular and the outside. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the check valves of Maly et al. on the apparatus of Murray et al. This would be done so that the fluid entering the tubular would not go unchecked and allowed to flow

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both ways. It would only flow in when there was positive pressure on the valve and it would not flow out except through the secondary check valve.

*Allowable Subject Matter*

7. Claims 3-5, 12, 14, 16, 18-23 and 36-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is an examiner's statement of reasons for allowance: None of the prior art of record shows the combination of a flapper closure element, as a first one-way flow valve for the entry of fluid when external pressure is greater than the internal pressure of the collar, with a secondary one-way flow element that allows fluid to exit the collar if the internal pressure is greater than the external.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Raulins et al., Bowyer, Ringgenberg, Sullaway et al. '053 and Sullaway et al. '342 all show similar elements to those of the present invention.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P Stephenson whose telephone number is (703) 605-4969. The examiner can normally be reached on 8:30 - 5:00 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Bagnell can be reached on (703) 308-2151. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1020.

  
David Bagnell  
Supervisory Patent Examiner  
Art Unit 3672

DPS *lls*  
May 15, 2003